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Supreme Court of the United States

OCTOBER TERM, 1945

No. 516

LAURENCE H. ELDREDGE AND THE PENNSYLVANIA COMPANY FOR INSURANCES ON LIVES AND GRANTING ANNUITIES, AS CO-EXECUTORS UNDER THE WILL OF CONSTANCE GARDNER TAYLOR, DECEASED, PETITIONERS,

vs.

WALTER J. ROTHENSIES, COLLECTOR OF INTERNAL REVENUE AT PHILADELPHIA

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT AND SUPPORTING BRIEF

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TABLE OF CONTENTS

	Page
Petition for Writ of Certiorari	1
I. Summary Statement of the Matter Involved	1
II. Jurisdiction	4
III. Question Presented	5
IV. Reasons Relied on for the Allowance of the Writ ..	5
Brief in Support of Petition for Writ of Certiorari	9
I. Opinions of Courts Below	9
II. Jurisdiction	9
III. Statement of the Case	9
IV. Specification of Errors	9
V. Argument	
Summary	10
Point A—The Question whether an inter vivos trust is subject to Federal Estate Tax under Section 302(c) of the Revenue Act of 1926 on the present facts is an important question of Federal Estate Tax law which has not yet been settled by this Court; and the decisions of this Court relied on by the Circuit Court of Appeals are clearly distinguishable on their facts from the present case	10
Point B—The decision of the Circuit Court of Appeals for the Third Circuit in this case is inconsistent with a recent decision of the Cir- cuit Court of Appeals for the Second Circuit and is in conflict with recent decisions of the Tax Court construing Section 811(c) of the Internal Revenue Code and the decision of this Court in <i>Fidelity-Phila. Trust Co. v. Rothen-</i> <i>sies</i> (1945), 324 U.S. 108	20
VI. Conclusion	23

CASES CITED

	Page
Bryant v. Helvering (1940), 309 U.S. 106, 60 S. Ct. 444	16, 17, 21
Commissioner v. Estate of Field (1945), 324 U.S. 113 ...	14
Commissioner v. Irving Trust Co. (CCA 2—1945), 147 F. (2d) 946	21
Eldredge v. Rothensies (1944), 57 F. Supp. 474	9
Eldredge v. Rothensies (CCA 3—1945), 150 F. 2d 23	9
Fahnestock, Estate of Harris, v. Commissioner (1945), 4 T.C. — (No. 129)	22
Fidelity-Phila. Trust Co. v. Rothensies (CCA 3, 1944), 142 F. (2d) 838	11
Fidelity-Phila. Trust Co. v. Rothensies (1945), 324 U.S. 108	5, 6, 9, 10, 11, 19, 20
Goldstone v. United States (1945), 325 U.S. —	4, 6, 12, 13, 14, 22
Helvering v. Hallock (1940), 309 U.S. 106, 60 S. Ct. 444	16, 17, 18, 22
Helvering v. St. Louis Trust Co. (1935), 296 U.S. 39, 56 S. Ct. 74	17, 18
Hunnewell Est., Mary B., v. Commissioner (1945), 4 T.C. — (No. 132)	22
Klein v. United States (1931), 283 U.S. 231, 51 S. Ct. 398	15, 16, 17
May v. Heiner (1930), 281 U.S. 238	4, 9, 14, 15, 16, 17, 18, 19
McCormick v. Burnet (1931), 283 U.S. 784, 51 S. Ct. 343 ..	15
McEachern v. Rose (1937), 302 U.S. 56	4
Morsman v. Burnet (1931), 283 U.S. 783, 51 S. Ct. 343 ...	15
Reinecke v. Northern Trust Co. (1929), 278 U.S. 339, 49 S. Ct. 123	15

STATUTES CITED

	Page
Internal Revenue Code, Section 811 (c)	2, 10, 19, 20
Judicial Code, Sec. 240 (a), as amended	4
Revenue Act of 1918, Section 402 (c)	19
Revenue Act of February 26, 1926, 44 Stat. 70	
Section 302 (a)	17
Section 302 (c)	2, 4, 5, 9, 10, 15, 17, 19, 20, 21, 22

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1945. No. —

LAURENCE H. ELDREDGE AND THE PENNSYLVANIA COMPANY FOR INSURANCES ON LIVES AND GRANTING ANNUITIES, AS CO-EXECUTORS UNDER THE WILL OF CONSTANCE GARDNER TAYLOR, DECEASED,

Petitioners,

v.

WALTER J. ROTHENSIES, COLLECTOR OF INTERNAL
REVENUE AT PHILADELPHIA.

**PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE THIRD CIRCUIT**

To the Honorable, the Chief Justice, and the Associate Justices of the Supreme Court of the United States:

The petition of Laurence H. Eldredge and The Pennsylvania Company for Insurances on Lives and Granting Annuities, as Co-executors under the Will of Constance Gardner Taylor, Deceased, respectfully shows to this Honorable Court:

**I. SUMMARY STATEMENT OF THE MATTER
INVOLVED**

This is a civil action to recover \$44,901.70, with interest, paid to respondent for Federal Estate Tax (R. 2). The District Court entered judgment for the respondent

(R. 19). The Circuit Court of Appeals affirmed the judgment and subsequently denied a petition for rehearing (R. 26-27). Petitioners seek a review and a reversal of the judgment on the ground the tax was illegally assessed and collected.

The question presented is whether the principal of an inter vivos trust created by decedent in 1930 should be included in her estate for Federal Estate Tax purposes under Section 302(c) of the Revenue Act of 1926, 44 Stat. 70, which is now Section 811(c) of the Internal Revenue Code. It is conceded by respondent that the transfer was not made in contemplation of death within the meaning of Section 811(c) (defendant's twelfth request for findings of fact, R. 17). Also, because the transfer in question was an irrevocable lifetime transfer with a life interest retained, created prior to the Joint Resolution of Congress of March 3, 1931, the United States Attorney in a letter to Judge Kirkpatrick dated May 3, 1944, expressly abandoned the contention "that the settlor's reservation of life estate in the trust income to herself brought the transferred property under the taxing statute". Consequently, the single narrow question presented is whether the terms of the trust agreement and the circumstances surrounding its execution establish that the transfer effected by the trust was one "intended to take effect in possession or enjoyment at or after (settlor's) death" within the meaning of Section 302(c).

The facts surrounding the creation of the trust and its terms are:

In 1928 the decedent fell in love with Presley M. Taylor. She had been living in Massachusetts with her second husband, William Gordon Means, and her three children, William, Anna and Augustus. The third child was the son of Mr. Means, the other two were children of the first husband. Mrs. Means (as she then was) left her husband in October 1928 and came to Philadelphia (R. 8). She planned in due course to institute divorce proceedings in Philadelphia, with the expressed intention of marrying Mr. Taylor after a final

divorce decree was obtained (R. 8, 15). In November 1928, Mr. Means obtained a court order in Massachusetts awarding the custody of his three-year-old son Augustus, to him (R. 12).

Mr. Means did not trust his wife's business judgment and considered her to be reckless in spending money and incurring personal indebtedness (R. 15). He was concerned about the future financial welfare of his son and the other two children. He told his wife "that before obtaining her divorce she must make adequate and equal provision by an irrevocable trust for her three children, Mrs. Means to have the income of the said trust for the period of her life" (R. 15). In other words, his position was that he would contest the divorce proceedings unless Mrs. Means made absolute and final provision for her children without any string or tie attached to it. His reason was that "I wanted to insure provision for her children, whose financial situation I felt would be endangered unless she parted irrevocably with the funds in question" (R. 15).

This proposal was finally agreed to. A trust deed was executed. The securities, together with the deed of trust, were placed in escrow on February 19, 1930. Meanwhile Mrs. Means brought suit for divorce in Pennsylvania and a final decree of divorce was entered on June 2, 1930 (R. 14).

In June 1930, in accordance with the escrow agreement, the securities were turned over to the trustees (R. 14).

The important paragraph of the deed of trust provides:

"My said Trustees shall pay the net income of the trust fund so created to myself during my life and upon my death they shall divide the said fund into as many equal parts as there shall be children of mine then living and issue of any child of mine who shall have deceased leaving issue then living, the issue of each deceased child counting as one, and pay over, transfer, and convey one of said parts outright and free of any trust to each such child and/or to such issue of any deceased child, such issue to take by right of representation per stirpes and not per capita; and if I shall

die leaving no child and no such issue then living, pay over, transfer, and convey the said trust fund as I may by will appoint; and in default both of such child and/or such issue and of such appointment, pay over, transfer, and convey the said funds to my heirs." (R. 11).

When this deed was executed on February 19, 1930, the settlor was 35 years old and had three living children who were 13, 10 and 4 years of age, respectively (R. 8). They were all alive when the settlor died in 1941, and entitled to receive the principal of the trust (R. 8-9).

Petitioners excluded the value of the trust from the estate tax return. The Commissioner included it and gave notice of a proposed deficiency in estate tax. The proposed deficiency was paid, claim for refund filed, and thereafter this suit was instituted (R. 9-10).

II. JURISDICTION

1. The jurisdiction of this Court is invoked under the Judicial Code, Section 240(a), as amended by the Act of February 13, 1925, ch. 229, 43 Stat. 938 (28 USCA § 347).

2. The nature of the case is the proper construction of the Revenue Act of February 26, 1926, ch. 27 § 302(c), 44 Stat. 70, 26 U.S.C. 811(c).

3. The date of the judgment of the Circuit Court of Appeals for the Third Circuit to be reviewed is June 12, 1945 (R. 27). A timely petition for rehearing was filed which was denied on August 2, 1945 (R. 27).

4. The following cases sustain the jurisdiction of this Court:

May v. Heiner (1930), 281 U.S. 238

Goldstone v. United States (1945), 325 U.S. —

McEachern v. Rose (1937), 302 U.S. 56, 59

III. QUESTION PRESENTED

Where decedent (prior to March 3, 1931) created an irrevocable inter vivos trust with the actual intent of making immediate and final provision for her three existing children, in which she reserved the income for life and provided that upon her death the principal should be paid to her children then living and issue of any deceased child, is the trust taxable under Section 302(c) of the Revenue Act of 1926 as a transfer "intended to take effect in possession or enjoyment at or after (her) death" because decedent added an additional provision that in default of surviving issue the principal should be paid "as I may by will appoint" and in default of appointment "to my heirs"?

IV. REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

1. The question, whether an inter vivos trust is subject to the Federal Estate Tax under Section 302(c) of the Revenue Act of 1926, where the facts are as in this case, is an important question of Federal Estate Tax law which has not yet been, but should be, settled by this Court.

2. The Circuit Court of Appeals erred in holding that this case is governed by the decision of this Court in *Fidelity-Phila. Trust Co. v. Rothensies*, 324 U.S. 108, and did not give proper weight to the fact that in that case the settlor gave the remainder to persons not in existence at the time the trust was created or at the time she died whereas in the case at bar the settlor gave the entire remainder absolutely to persons who were in existence at the time the trust was created and at the time she died, by reason of which fact it was certain at and before settlor's death that her power of appointment was nugatory.

3. The decision of the Circuit Court of Appeals filed on June 12, 1945, and its construction of the decision of this Court in *Fidelity-Phila. Trust Co. v. Rothensies*, 324 U.S.

108, gives no effect to the explanation of that case and the limitations on its application set forth by this Court in *Goldstone et al. v. United States*, 325 U.S. , decided on June 11, 1945.

4. The decision of the Circuit Court of Appeals and its construction of the decision of this Court in *Fidelity-Phila. Trust Co. v. Rothensies*, 324 U.S. 108, is in conflict with recent decisions of the Tax Court and is inconsistent with a recent decision of the Circuit Court of Appeals for the Second Circuit construing said decision of this Court.

5. The law as to what transfers of property effected by an inter vivos trust are transfers "intended to take effect in possession or enjoyment at or after (settlor's) death" within the meaning of Congress is not yet settled with respect to facts such as those presented in the case at bar and further clarification by this Court will bring greater certainty into the law for the guidance of courts and counsel.

Wherefore, your petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the United States Circuit Court of Appeals for the Third Circuit, commanding the United States Circuit Court of Appeals for the Third Circuit to certify and to send to this Court a full and complete transcript of the Record and of all proceedings had in the case numbered and entitled on its Docket No. 8725, October Term, 1944, Laurence H. Eldredge and The Pennsylvania Company for Insurances on Lives and Granting Annuities, as co-executors under the Will of Constance Gardner Taylor, Deceased, Plaintiffs-Appellants, v. Walter J. Rothensies, Collector of Internal Revenue at Philadelphia, Defendant-Appellee, to the end that this cause may be reviewed and determined by this Honorable Court as provided for by the statutes of the United States; and that the judgment therein of said Circuit Court of Appeals for the Third Circuit be reversed by this Honorable Court, and that your

petitioners may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioners will ever pray.

LAURENCE H. ELDREDGE,

THE PENNSYLVANIA COMPANY FOR INSURANCES ON LIVES AND GRANTING ANNUITIES,

*Co-executors under the Will of
Constance Gardner Taylor,
deceased,
Petitioners,*

By LAURENCE H. ELDREDGE,
Attorney for Petitioners.